
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.: 2741 of 2007

DATE OF DECISION : May 10, 2007

M/S Prasad Enterprises

..... Petitioner

VERSUS

Union of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE M.M KUMAR.
HON'BLE MR. JUSTICE RAJESH BINDAL.

Present: Mr. Akshay Bhan, Advocate
for the petitioner.

Mr. Sanjeev Kaushik, Advocate
for the respondents.

RAJESH BINDAL, J.

The petitioner has approached this Court, by filing the present petition, praying for the issuance of a writ in the nature of mandamus directing the respondents to release the consignments detained after import.

Briefly the facts are that the petitioner imported two consignments of Fabrics namely “Polyester Fabric Bonded”. The import consignments reached at ICD, Gariharsaru, Gurgaon but were not cleared in spite of the fact that the petitioner had approached the authorities by submitting bills of entry on 15.12.2006 and 18.12.2006. It is alleged that on persistent request made by the petitioner for release of the goods, it was only on 22.12.2006 that the goods were examined. It has further been pleaded that the goods imported are seasonal in nature, which are required for manufacture of garments to be used in winters and any delay in release of the consignments was detrimental to the business interest of the petitioner. Besides this, the petitioner was also incurring losses on account

of demurrages. Still further, the petitioner submitted that in case the final assessment was not possible, the goods could very well be released by framing provisional assessment in terms of Section 18 of the Customs Act, 1962 (for short 'the Act').

In response to the notice issued, the respondents have filed reply and submitted that after the submission of bill of entry by the petitioner, on 18.12.2006 itself first check order was given for examination of goods. The samples for both the consignments were drawn and sent to CRCL for testing. On 22.12.2006, 100% examination of the goods was ordered. The test reports of the samples were received in the office of the respondents on 31.1.2007/ 1.2.2007. As per the test report, it was found that the goods were liable to be classified under Customs Tariff heading 55151230 instead of Customs Tariff heading declared by the petitioner as 59070099. Besides there being huge difference in the value of goods declared by the petitioner, there was substantial difference in the rate of duty under both the entries. After the receipt of the test report, show cause notice was issued to the petitioner, but the petitioner is not cooperating in the investigation.

After hearing learned counsel for the parties and considering the material on record on 20.3.07, this Court passed the following order:-

“We have heard learned counsel for the parties at some length. It has transpired that the provisional assessment order has not been passed till date as has been provided by Section 18 of the Customs Act, 1962 and despite the fact that bills of Entry were submitted on 15.12.2006 and 18.12.2006 and, thereafter, the matter has been kept pending while awaiting the test report. Even the test report had been received on 1.2.2007, yet the assessment order has not been passed. It is not denied that the goods under import are not prohibited goods.

The petitioner-entrepreneur is facing competition on account of globalization and detaining the goods for a period of over three months is likely to adverse its business

interest. It is probably for that reason that instructions have been issued by the Chief Commissioner, Customs and Excise to clear the consignments preferably within a period of 48 hours of receipt of bill of entry. Therefore, in the facts and circumstances, we deem it just and appropriate to direct that the goods be released to the petitioner by provisionally assessing the value at the rate of US\$ 0.55 per meter on the basis of contemporary imports against the declared value of US\$ 0.25 per meter. For the difference between the declared value and the provisionally assessed value, the petitioner shall furnish bank guarantee to the extent of 25% of the additional duty and for the rest 75%, he shall furnish PD bond. The petitioner undertakes to furnish the bank guarantee as well as PD bond within two days. If that is done then the goods be released within next two days”.

Thereafter, an application for clarification moved by the revenue to the effect that the classification of the goods, for which necessary pleadings had been made in the written statement filed by them, was required to be specified in the order, but the application was rejected by this Court vide Order dated 26.3.2007.

At the resumed hearing today, learned counsel for the petitioner at the very outset raised a grouse that in spite of there being no direction in the order passed by this Court for classification of the goods under one entry or the other, the respondents have put the goods under a tariff entry different than what was declared by the petitioner. Resultantly, the petitioner has been made to submit bank guarantee and PD bond of higher value. This was for the reason that a tariff entry under which the goods were classified by the respondents carried high rate of duty as compared to the tariff entry claimed by the petitioner. The respondents having failed to carry out the interim directions given by this Court and on that account the petitioner has suffered huge loss. It has further been submitted by learned counsel for the petitioner that the action was clearly mala fide. This was without prejudice to the submission of the petitioner that at the stage of provisional

assessment, the respondents could not change the tariff entry for assessment of duty. The same could be done only at the time for final assessment. At the time of provisional assessment, the goods were liable to be assessed under the tariff entry declared by the petitioner. Finally he submitted that the bills of entry having been filed by the petitioner way back in December 2006, and non-release of goods even after expiry of more than four months, the petitioner is entitled to be compensated for the loss suffered.

On the other hand, learned counsel for the revenue submitted that immediately after the order was passed by this Court on 20.3.2006 and on rejection of the application of the revenue for clarification on 26.3.07, the respondents vide order dated 26.3.2007 had intimated the counsel for the petitioner about the amount of bank guarantee and PD bond to be submitted by them for the release of the goods, in terms of the order passed by this Court. According to learned counsel for the respondents, thereafter, the petitioner has not approached for release of the goods as the tariff entry under which the goods have been provisionally assessed is being disputed by the petitioner. Section 18 of the Act provides for provisional assessment of duty where in certain specified situations, the proper officer has been empowered to make provisional assessment, in order to release the goods on payment of the duty or furnishing of security of the difference. There is no bar under this Section to assess the duty provisionally under a different tariff entry as against one claimed by the importer as this provisional assessment is subject to final assessment, however, this exercise of power certainly has to be used on some valid and reliable material and not merely on conjectures and surmises, which may result in unnecessary harassment of the importer. The discretion vested in him has to be exercised in reasonable and proper manner within the limits of jurisdiction conferred on him. Needless to add that there should not be arbitrary exercise of powers. The Section provides that even pending receipt of test report also the provisional assessment can be framed. In the present case, provisional assessment has been framed after the receipt of test report. So, in our view, there is some prima-facie material with the proper officer to reach to a conclusion. The contention of the learned counsel for the petitioner that at

the time of framing of provisional assessment, the proper officer does not have the jurisdiction to change the tariff entry for the purpose of assessment of duty, has no leg to stand. Provisional assessment of duty would certainly include rate of goods declared at the time of import and the duty chargeable thereon. The respondents, in the present case, have directed the petitioner to furnish bank guarantee and PD bonds by determining the tariff on the value provisionally directed by this Court on the basis of the pleadings of the parties, under a tariff entry under which the goods were liable to be assessed as per the test report received by them. This Court at this interim stage of the proceedings before the authorities is not equipped with the expertise to issue a direction only as an interim measure for assessment of the goods under one or the other tariff entry. The issue can very well be raised and gone into by the competent authority while passing the final order in the regular proceedings for which show cause notice is said to have already been issued to the petitioner.

In view of our above discussion, this Court does not find any merit in the contention of the petitioner that the respondents do not have jurisdiction to determine the tariff entry for the purpose of levy of duty on the basis of test report, while framing the provisional assessment at the time of release of the goods. Even this Court would not like to substitute its own opinion in that regard, as an interim measure, as the issue raises disputed questions of fact, which can very well be gone into in the regular assessment proceedings. Accordingly while rejecting the contention of the petitioner in this regard we hold that the petitioner is at liberty to take the delivery of the goods in terms of intimation sent to him by the respondents vide letter dated 26.3.2007 on furnishing the bank guarantee and PD bonds of the value of Rs.10,01,278/- and Rs. 30,03,834/-, respectively. In case the petitioner complies with this direction, the goods shall be released within two days thereafter, provisionally, subject to final order being passed.

As far as the claim of the petitioner for suffering loss on account of undue delay caused by the respondents is concerned, we cannot record any final finding either-way as issue involved requires determination

of disputed questions of fact. However, we leave it open to the petitioner to raise the issue in any appropriate proceedings in accordance with law.

The petition is disposed of in the manner indicated above.

(RAJESH BINDAL)
JUDGE

May 10, 2007
Amit/Pka

(M.M. KUMAR)
JUDGE